

Message Text

PAGE 01 STATE 154782

64

ORIGIN EB-11

INFO OCT-01 NEA-14 ISO-00 COME-00 TRSE-00 IO-14 AID-20

SAM-01 SSO-00 NSCE-00 USIE-00 INRE-00 CIAE-00 DODE-00

PM-07 H-03 INR-11 L-03 NSAE-00 NSC-07 PA-04 RSC-01

PRS-01 SP-03 SS-20 /121 R

DRAFTED BY EB/CBA/BP/HJWINTER/PATOFF;OLIA:MKIRK/DHOINKES:J

APPROVED BY EB/CBA/BP - MR. WINTER

NEA/ARP - F. DICKMAN (SUBSTANCE)

----- 024542

O 172137Z JUL 74

FM SECSTATE WASHDC

TO AMCONSUL JERUSALEM IMMEDIATE

INFO AMEMBASSY JIDDA IMMEDIATE

C O N F I D E N T I A L STATE 154782

E.O. 11652:GDS

TAGS: EIND, SA

SUBJECT: PROTECTION OF INDUSTRIAL PROPERTY RIGHTS IN
SAUDI ARABIA

REFERENCE: JERUSALEM'S 1440 OF JULY 17, L974

FOR BILLER, MEMBER OF SECRETARY SIMON'S PARTY, FROM WINTER:

BASED ON LIMITED INFORMATION AVAILABLE TO THE DEPARTMENT
AND THE PATENT OFFICE REGARDING PROTECTION OF INDUSTRIAL
PROPERTY RIGHTS IN SAUDI ARABIA (SA), WE HAVE DEVELOPED THE
FOLLOWING PRELIMINARY INFORMATION. WE HAVE ATTEMPTED TO
INTERPOLATE SOME OF THE QUESTIONS WHICH MAY HAVE BEEN
GARBLED IN TRANSMISSION.

1. WHAT IS EFFECT OF PUBLISHING A CAUTIONARY NOTICE OF
OWNERSHIP IN THE OFFICIAL GAZETTE OR IN A DAILY NEWSPAPER
IN ORDER TO SAFEGUARD THE RIGHT IN AN INVENTION? WHAT
CONFIDENTIAL

PAGE 02 STATE 154782

PROTECTION IS PROVIDED BY SUCH PUBLICATION?

(A) INFORMATION ABOUT THE EFFECT OF PUBLISHING A
CAUTIONARY NOTICE TO SAFEGUARD THE RIGHT IN AN INVENTION

IN SA IS BASED ON THREE PRIVATE SECTOR SOURCES.

(B) ONE LARGE US INDUSTRIAL PROPERTY LAW FIRM SAYS THAT CAUTIONARY NOTICES DO ESTABLISH SOME CLAIM OF OWNERSHIP

FOR PATENTS. CAUTIONARY NOTICES MAY POSSIBLY BE USED AS A BASIS FOR ACTION AGAINST AN ALLEGED INFRINGER. CAUTIONARY NOTICES ARE BETTER THAN RELYING ON A COMMERCIAL ADVERTISEMENT IN A NEWSPAPER. OUR SOURCE SAYS CAUTIONARY NOTICES CONCERNING PATENTS ARE NOT RELIED UPON VERY MUCH IN SA. HE IS NOT AWARE OF ANY ESTABLISHED LAW OR CASES INVOLVING CAUTIONARY NOTICES.

(C) ANOTHER LARGE US INDUSTRIAL PROPERTY LAW FIRM STATED THAT THEY HAVE BEEN USING CAUTIONARY NOTICES IN SA AND THE ARAB EMIRATES. THIS SOURCE SAYS THAT PUBLICATION OF NOTICES "APPEARS TO HAVE BEEN EFFECTIVE IN CLAIMING PROTECTION FOR AN INVENTION" BECAUSE OF THE POSSIBILITY THAT THEY MIGHT BE USED AGAINST AN ALLEGED INFRINGER. HOWEVER, NO REPEAT NO CASES OF THIS NATURE COULD BE CITED.

(D) A PATENT COUNSEL FOR A LARGE US PHARMACEUTICAL COMPANY DOES NOT THINK THAT PUBLICATION OF CAUTIONARY NOTICES WOULD HAVE ANY SIGNIFICANT EFFECT IN SAFE-GUARDING AN INVENTION AND CERTAINLY NO SPECIFIC LEGAL EFFECT. IN FACT, HIS COMPANY HAS NEVER USED THIS PRACTICE IN SA.

(E) IT IS OUR VIEW THAT THE PUBLICATION OF A CAUTIONARY NOTICE PROVIDES VERY LIMITED, IF ANY, PROTECTION FOR AN INVENTION. WE HAVE LITTLE REASON TO BELIEVE THAT IT WOULD PROVIDE A SOUND BASIS FOR LEGAL ACTION AGAINST AN INFRINGER OF A PARTICULAR INVENTION. HOWEVER, SINCE SA DOES NOT PRESENTLY HAVE A PATENT LAW A CAUTIONARY NOTICE MIGHT PROVIDE SOME BASIS FOR APPROACHING THE SAG AND SEEKING RELIEF FOR INFRINGEMENT
CONFIDENTIAL

PAGE 03 STATE 154782

OF AN INVENTION.

2. WHAT PROTECTION IS PROVIDED BY THE SAUDI TRADE MARKS ORDINANCE?

(A) ANY PERSON REGISTERING A TRADEMARK IN SA IS CONSIDERED THE SOLE PROPRIETOR OF THE MARK. AFTER FIVE YEARS FROM THE DATE OF REGISTRATION, THIS BECOMES INCONTESTABLE EXCEPT IF A PERSON PROVES HE HAS USED THE MARK ONE YEAR PRIOR TO ITS REGISTRATION. PERSONS INFRINGING THE TRADEMARK ARE SUBJECT TO FINE AND/OR IMPRISONMENT AND PAYMENT OF COMPENSATION TO THE TRADEMARK PROPRIETOR.

(B) A PERSON IS CONSIDERED AN INFRINGER WHEN HE COUNTERFEITS A REGISTERED TRADEMARK; PLACES THE MARK OF ANOTHER ON HIS GOODS WITH FRAUDULENT INTENT; SELLS

GOODS BEARING FRAUDULENT TRADEMARKS WHEN HE HAS KNOWLEDGE OF SAME; OR IMITATES THE REGISTERED MARK OF ANOTHER. A PERSON CAN ALSO BE FINED OR IMPRISONED FOR WRONGFULLY INDICATING THAT HIS MARK IS REGISTERED.

(C) A TRADEMARK PROPRIETOR, EVEN BEFORE PROSECUTION, CAN HAVE SEIZED THE IMPLEMENTS OR MATERIALS BEARING THE INFRINGING TRADEMARK. THE PROPRIETOR CAN ALSO BAR THE IMPORTATION OF GOODS BEARING INFRINGING MARKS AND SUCH GOODS CAN BE CONFISCATED. (SEE ALSO 3.(D) BELOW.)

3. WHAT GAPS REMAIN, AND FROM OUR POINT OF VIEW HOW MIGHT THEY BEST BE FILLED?

(A) PATENTS. THE ULTIMATE ANSWER IS, OF COURSE, TO HAVE THE SAG ENACT A PATENT LAW AND THUS PROVIDE A BASIS FOR FOREIGN NATIONALS TO OBTAIN SAUDI ARABIAN PATENTS.

(B) A PATENT LAW AND SYSTEM, SUCH AS THAT OF THE UNITED STATES, IS A VERY COMPLEX AND EXPENSIVE SYSTEM TO ADMINISTER. HOWEVER, THERE ARE OTHER TYPES OF PATENT LAWS AND SYSTEMS WHICH ARE PARTICULARLY SUITED TO THE CONFIDENTIAL

PAGE 04 STATE 154782

NEEDS OF DEVELOPING COUNTRIES SUCH AS SA. FOR EXAMPLE, SUCH SYSTEMS COULD RANGE FROM A SIMPLE REGISTRATION OF INVENTIONS TO MORE COMPLEX SYSTEMS SUCH AS A JOINT REGIONAL PATENT OFFICE.

(C) A SYSTEM THAT COULD BE ESTABLISHED EASILY AND QUICKLY WOULD BE FOR THE SAG TO PROVIDE FOR THE REGISTRATION OF A FOREIGN PATENT (I.E. CONFIRMATION PATENTS) WHICH IS IN EFFECT IN A PARTICULAR INDUSTRIALIZED COUNTRY HAVING AN EXAMINATION SYSTEM. MANY OF THE FORMER ENGLISH-SPEAKING COLONIES (E.G. KENYA) PERMIT THE REGISTRATION OF SUCH PATENTS WITHIN THREE YEARS FROM THE GRANT IN THE UNITED KINGDOM. AS AN INTERIM ARRANGEMENT, SA COULD PROVIDE FOR THE REGISTRATION OF FOREIGN PATENTS ON THE BASIS OF THE ISSUANCE OF A US PATENT BY THE US PATENT OFFICE, WHICH HAS A STRICT EXAMINATION SYSTEM.

(D) TRADEMARKS. THE MAJOR PROBLEM CONCERNING THE SA TRADE MARKS ORDINANCE, ACCORDING TO OUR PRIVATE SOURCES, IS THE LIMITED TERM OF PROTECTION, WHICH IS ONE HIJRI YEAR (I.E. THE MOHAMMEDAN YEAR, WHICH IS 11 DAYS LESS

THAN A GREGORIAN CALENDAR YEAR). THE TRADE MARK MAY BE RENEWED FOR PERIODS OF ONE YEAR, WITH THE PAYMENT OF

RELATIVELY HIGH RENEWAL FEES EACH YEAR.

(E) WE HAVE NOT DEALT WITH THE BOYCOTT RULES WITH REGARD TO TRADE MARKS WHICH IS ANOTHER PROBLEM, PRIMARILY OF POLITICAL ORIGIN.

4. HAS PROTECTION OF INDUSTRIAL PROPERTY RIGHTS BY MEANS OF SPECIAL CONTRACTUAL ARRANGEMENTS BEEN SATISFACTORY? IF NOT, WHY NOT?

(A) WE HAVE NO SPECIFIC INFORMATION ABOUT THE PROTECTION OF INDUSTRIAL PROPERTY RIGHTS BY MEANS OF CONTRACTUAL ARRANGEMENTS IN SA. AS A GENERAL RULE, US FIRMS ARE MOST RELUCTANT TO MAKE INFORMATION AVAILABLE ON THE NATURE AND DETAILS OF THEIR CONTRACTUAL ARRANGEMENTS REGARDING INDUSTRIAL PROPERTY IN ANY COUNTRY. CONFIDENTIAL

PAGE 05 STATE 154782

WE HAVE BEEN INFORMED, HOWEVER, THAT CONTRACTUAL ARRANGEMENTS (E.G. LICENSING AGREEMENTS) WOULD BE MUCH BETTER THAN THE PUBLICATION OF CAUTIONARY NOTICES AS REGARDS INVENTIONS, ESPECIALLY IF "KNOW-HOW" WERE IMPORTANT, WHICH IS USUALLY THE CASE. IT WAS POINTED OUT THAT DEVELOPING COUNTRIES, SUCH AS SA, WOULD PROBABLY BE INVOLVED IN THE CONTRACTUAL ARRANGEMENTS FOR THE PROTECTION OF THE INVENTIONS AND KNOW-HOW, AND THUS WOULD HAVE AN INTEREST IN ENFORCING THESE RIGHTS. THE SITUATION WOULD ALSO BE AFFECTED BY THE LAW OF CONTRACTS IN SA BUT WE HAVE NO INFORMATION ON THIS MATTER.

(B) MORE DETAILED INFORMATION COULD PERHAPS BE OBTAINED FROM PRIVATE INDUSTRY SOURCES BUT THIS WOULD TAKE CONSIDERABLE TIME AND THE SOURCES WOULD HAVE TO BE PROTECTED.

5. HOW LARGE AN UNDERTAKING WOULD IT BE FOR SAUDI ARABIA TO ESTABLISH A PATENT OFFICE?

(A) THE ESTABLISHMENT AND STRUCTURE OF A PATENT OFFICE IN SA WOULD DIRECTLY DEPEND ON THE PATENT LAW WHICH THAT COUNTRY INTENDS TO ESTABLISH. THERE ARE PRESENTLY ON-GOING DISCUSSIONS BETWEEN THE INDUSTRIAL DEVELOPMENT CENTRE FOR ARAB STATES (IDCAS), LOCATED IN CAIRO, AND THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) REGARDING A MODEL LAW ON INVENTIONS, WHICH MAY TAKE ANY NUMBER OF SPECIFIC FORMS. (WIPO IS THE SECRETARIAT FOR A NUMBER OF MULTILATERAL INDUSTRIAL PROPERTY AGREEMENTS INCLUDING THE WORLD-WIDE PARIS INDUSTRIAL PROPERTY CONVENTION AND THE PATENT COOPERATION TREATY.) IF THE

PATENT LAW TO BE ADOPTED BY SA PROVIDES FOR REGISTRATION

- - -

OF PATENTS ONLY, A SMALL PATENT OFFICE COULD BE ESTABLISHED IN THAT COUNTRY WITHOUT GREAT EFFORT. UNDER A SYSTEM OF REGISTRATION THE NEED FOR TECHNICALLY TRAINED PERSONNEL (PATENT SEARCHERS AND EXAMINERS) WOULD BE ELIMINATED AND, GENERALLY, A CLERICALLY ORIENTED STAFF WOULD SUFFICE. THE NUMBER OF PERSONNEL WOULD BE LARGELY DEPENDENT ON THE EXPECTED MAGNITUDE OF PATENT CONFIDENTIAL

PAGE 06 STATE 154782

APPLICATION FILINGS AND THEREFORE NO PRECISE ESTIMATE CAN BE ESTABLISHED. INITIALLY, HOWEVER, A SMALL STAFF OF APPROXIMATELY 30 PEOPLE WOULD PROBABLY BE SUFFICIENT.

(B) IF THE PATENT LAW TO BE ADOPTED BY SA PROVIDES FOR EXAMINATION OF PATENT APPLICATIONS, A MORE EXTENSIVE PATENT OFFICE WOULD HAVE TO BE ESTABLISHED. IF THE PROPOSED SA PATENT OFFICE DID NOT PERFORM ITS OWN SEARCHES AND REQUIRED PATENT APPLICANTS TO FILE APPLICATIONS TOGETHER WITH SEARCH REPORTS, OR IF SA BECAME A MEMBER OF THE INTERNATIONAL PATENT INSTITUTE (IIB) IN THE HAGUE AND CONTRACTED WITH THAT ORGANIZATION TO PERFORM SEARCHES ON PATENT APPLICATIONS, THE NEED FOR EXTENSIVE PATENT DOCUMENTATION LOCATED IN SA WOULD LARGELY BE OBIATED. IT SHOULD BE NOTED, HOWEVER, THAT IDCAS IS PRESENTLY CONTEMPLATING THE CREATION OF A REGIONAL PATENT DOCUMENTATION CENTER FOR THE ARAB STATES WHICH, ONCE ESTABLISHED, COULD PRESUMABLY BE USED BY ALL MEMBER COUNTRIES SUCH AS SA. IT IS NOT YET CLEAR WHAT SHAPE SUCH A REGIONAL PATENT DOCUMENTATION CENTER WOULD TAKE, INCLUDING ITS CAPACITY TO RENDER PATENTABILITY SEARCHES SIMILAR TO THAT PROVIDED BY THE IIB. ALTHOUGH, UNDER THIS SYSTEM, PATENT SEARCHES WOULD NOT HAVE TO BE PROVIDED BY A SA PATENT OFFICE, IT WOULD NEVERTHELESS HAVE TO HAVE A TECHNICALLY QUALIFIED STAFF FOR THE PURPOSE OF CONDUCTING AN EXAMINATION, TAKING INTO ACCOUNT THE SEARCH RESULTS PROVIDED. AGAIN, THE SIZE OF SUCH A STAFF WOULD BE DIRECTLY RELATED TO THE NUMBER OF APPLICATIONS EXPECTED TO BE FILED. INITIALLY, SUCH A STAFF NEED NOT EXCEED APPROXIMATELY 30 SCIENTISTS OR ENGINEERS WITH A SIMILAR NUMBER OF CLERICAL SUPPORT STAFF.

(C) IF THE CONTEMPLATED PATENT LAW PROVIDED FOR A FULL EXAMINATION SYSTEM INCLUDING SEARCHING TO BE DONE AT A SA PATENT OFFICE, ANOTHER CRUCIAL REQUIREMENT (IN ADDITION TO TECHNICALLY QUALIFIED PERSONNEL) WOULD BE THAT OF ADEQUATE PATENT DOCUMENTATION. ESTABLISHMENT OF ADEQUATE PATENT DOCUMENTATION FOR A SA PATENT OFFICE WOULD BE EXTREMELY COMPLEX AND TREMENDOUSLY EXPENSIVE.

CONFIDENTIAL

PAGE 07 STATE 154782

AS ALREADY INDICATED ABOVE, HOWEVER, IDCAS IS CONTEMPORATING THE ESTABLISHMENT OF A REGIONAL PATENT DOCUMENTATION CENTER WHICH COULD BE USED BY THE SA PATENT OFFICE.

6. WHAT KIND OF ASSISTANCE COULD THE US PATENT OFFICE PROVIDE?

(A) AT THE OUTSET, THE MOST IMPORTANT QUESTION TO BE ANSWERED IS WHAT KIND OF PATENT LAW WOULD FIT THE NEEDS OF SA. AS MENTIONED BEFORE, IDCAS AND WIPO ARE ALREADY CONSIDERING A MODEL LAW ON INVENTIONS. SUCH A LAW, ONCE ESTABLISHED, WOULD PROVIDE FOR SEVERAL OPTIONS DEPENDING ON THE NEEDS OF THE SPECIFIC COUNTRY. THE US PATENT OFFICE COULD INITIALLY PROVIDE EXPERT ASSISTANCE TO AID THE SAG IN ITS DETERMINATION OF WHAT KIND OF PATENT LAW WOULD BEST BE SUITED FOR SA. THIS WOULD DEPEND LARGELY ON THE PRESENT AND CONTEMPLATED INDUSTRIAL CAPABILITY OF THE COUNTRY AND MAY REQUIRE A STUDY SIMILAR TO THAT CONDUCTED IN BRAZIL AND ETHIOPIA WITH THE ASSISTANCE OF THE US PATENT OFFICE. ONCE THE DETERMINATION OF THE SPECIFIC PATENT LAW HAS BEEN MADE, THE US PATENT OFFICE COULD AGAIN AID IN AN ADVISORY CAPACITY IN THE ESTABLISHMENT OF A PATENT OFFICE. SUCH ADVICE WOULD INCLUDE THE SETTING UP OF AN EFFICIENT SYSTEM OF PROCESSING PATENT APPLICATIONS IN ACCORDANCE WITH THE ADOPTED PATENT LAW.

7. WHAT WOULD SAUDI ARABIA HAVE TO DO TO QUALIFY FOR PARTICIPATION IN THE PATENT COOPERATION TREATY (PCT)?

(A) IN ACCORDANCE WITH ARTICLE 62(1) OF THE PCT, ANY MEMBER STATE OF THE PARIS INDUSTRIAL PROPERTY CONVENTION MAY BECOME A PARTY TO THE PCT. THEREFORE, THE FIRST STEP TOWARD QUALIFICATION TO PARTICIPATE AND BECOME A MEMBER OF THE PCT, IS ADHERENCE TO THE PARIS CONVENTION. IT SHOULD BE NOTED THAT IF SAUDI ARABIA ACCEDES TO THE PCT, IT COULD AVAIL ITSELF OF SEVERAL BENEFICIAL FEATURES UNDER THAT TREATY- FOREIGN-ORIGINATED PCT APPLICATIONS WHICH DESIGNATED SAUDI ARABIA AS A COUNTRY IN WHICH PATENT PROTECTION IS SOUGHT, WOULD BE ACCOM-

CONFIDENTIAL

PAGE 08 STATE 154782

PANIED BY AN INTERNATIONAL SEARCH REPORT (CHAPTER I), THEREBY OBTAINING TO A LARGE EXTENT THE NEED FOR EXTENSIVE SEARCH CAPABILITIES IN A SAUDI ARABIAN PATENT OFFICE.

(B) MOREOVER, IF SA ALSO ADHERED TO CHAPTER II OF THE PCT, IT COULD UTILIZE THE INTERNATIONAL PRELIMINARY EXAMINATION REPORT ASSOCIATED WITH THE PCT APPLICATIONS

FROM APPLICANTS IN FOREIGN COUNTRIES ADHERING TO CHAPTER II. SUCH A REPORT COULD BE OF GREAT ASSISTANCE TO SA PATENT OFFICE IN ITS EXAMINATION OF INTERNATIONAL PATENT APPLICATIONS.

(C) LASTLY, BY ADHERING TO THE PCT, SA COULD AVAIL ITSELF OF THE TECHNICAL SERVICES UNDER CHAPTER IV OF THE PCT, ESPECIALLY THE PATENT INFORMATION SERVICES UNDER ARTICLE 50 AND TECHNICAL ASSISTANCE UNDER ARTICLE 51.

(D) THE PCT IS NOT YET IN FORCE. SIX DEVELOPING COUNTRIES HAVE ADHERED TO THE PCT TO DATE. THE US SENATE HAS GIVEN ADVICE AND CONSENT TO RATIFICATION OF THE PCT AND THE US WILL RATIFY AS SOON AS IMPLEMENTING LEGISLATION IS ENACTED. KISSINGER

CONFIDENTIAL

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 27 JUL 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INDUSTRIAL DEVELOPMENT, PROPERTY PROTECTION, PUBLICATIONS, COMMITTEE MEETINGS, INDUSTRIAL INVESTMENTS, TRADEMARKS, TRADEMARK AGREEMENTS, INTERGOVERNMENTAL COOPERATION, PATENT AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 JUL 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE154782
Document Source: ADS
Document Unique ID: 00
Drafter: EB/CBA/BP/HJWINTER/PATOFF;OLIA:MKIRK/DHOINKES:J
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: D740192-0348
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740789/abbryzri.tel
Line Count: 347
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: JERUSALEM'S 1440 OF JULY 17, L974
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 24 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 APR 2002 by shawdg>; APPROVED <27 MAR 2003 by ShawDG>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PROTECTION OF INDUSTRIAL PROPERTY RIGHTS IN SAUDI ARABIA
TAGS: EIND, SA
To: JERUSALEM INFO JIDDA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005